

A **WAN FAISAL W HASAN & ANOR v. IDEAL MASJAYA SDN BHD
 & ORS**

 HIGH COURT MALAYA, SHAH ALAM
 FAIZAH JAMALUDIN J
B [WRIT SUMMONS NO: BA-22NCC-53-04-2020]
 6 SEPTEMBER 2022

C **Abstract** – *An advocate and solicitor should not appear in court in any case where there is a reason to believe that he will be a witness in respect of a material or disputed facts in the case.*

D **LEGAL PROFESSION:** *Practice and etiquette – Disqualification – Application for – Firm acted for client in purchase of shares in company and individual in purchase of land held by company – Allegations of fraud and wrongdoing – Whether conflict of interest arose – Whether embarrassment would arise if firm acts for clients in suit – Whether there was likelihood that solicitors of firm would be witnesses in suit – Whether solicitors could maintain professional independence – Whether firm ought to be disqualified from acting for clients in suit – Legal Profession (Practice and Etiquette) Rules 1978, rr. 3, 4, 5(a) & 28(a)*

E The plaintiffs were the shareholders and directors of the first defendant, the owner of a Malay Reservation Land ('land'). The plaintiffs entered into a shares' sale and purchase agreement ('SSA') with the sixth defendant for the sale of the total issued shares of the first defendant, comprising 300,000 ordinary shares ('shares'). The security documents under the SSA, which
F included the original share transfer forms for the shares and the plaintiffs' undated resignation letters as directors of the first defendant, were kept by the plaintiffs' solicitors, as stakeholders ('stakeholder solicitors'). The stakeholder solicitors were to release the transfer documents and resignation letters to the sixth defendant after it had paid the redemption sum and redeemed the original share certificates. The sixth defendant paid for the
G purchase price for the shares but did not pay the redemption sum. Despite not given the original share transfer form and the resignation letters, the sixth defendant managed to register, on the company register at the Suruhanjaya Syarikat Malaysia ('SSM'), the transfer of shares in the first defendant from the plaintiff to the sixth defendant and replaced the plaintiffs as the directors
H of the first defendant. The SSM search results showed that the sixth defendant was the sole shareholder of the first defendant and the second and third defendants were appointed as the directors of the first defendant, in place of the plaintiffs. Shortly after the change of directors, the first defendant sold the land to the 11th defendant, who was also the sole shareholder of the sixth
I defendant. This made the 11th defendant the ultimate shareholder of the first defendant. The common denominator in all these transactions was the law firm, Messrs Armiy Rais ('MAR'), which acted for (i) the sixth defendant in

its purchase of the shares in the first defendant under the SSA; (ii) the 11th defendant in her purchase of the land from the first defendant under the Sale and Purchase agreement ('SPA'); and (iii) the first, sixth, tenth and 11th defendants in the present suit by the plaintiffs against the defendants premised upon, *inter alia*, allegations of fraud and wrongdoing under the SSA and the SPA. MAR had informed the stakeholder solicitors that they represented the sixth defendant and requested for the original issue document of title for the land for their client's exercise of conversion of the land. The stakeholder solicitors, however, refused to release the land title as the full consideration for the shares and their outstanding fees were yet to be settled. MAR then asked the stakeholder solicitors the full details of the amount of consideration not yet settled and the outstanding fees. The stakeholder solicitors sought an explanation from MAR for the change in shareholder of the first defendant to the sixth defendant despite the stakeholder solicitors still having in their custody the original issue document of title for the land, share certificates and transfer forms, that were executed by the plaintiffs and the sixth defendant, together with the original stamp duty certificate. MAR did not reply to explain. The plaintiff, by way of encl. 56, sought to disqualify MAR from acting for the first, sixth, tenth and 11th defendants in the present suit.

Held (allowing encl. 56):

- (1) Having acted for the sixth defendant in the SSA and the 11th defendant in the SPA, coupled with the fact that the sixth defendant was the sole shareholder of the first defendant at the time the first defendant entered into the SPA with the 11th defendant, MAR would be in a position of conflict of interest in acting for the first, sixth, tenth and 11th defendants in this suit. This could be seen from MAR writing to the stakeholder solicitors under the SSA as the solicitor for the sixth defendant, asking for the land title which was not the subject matter of the SSA but was, instead, the subject matter of the SPA where MAR acted as the solicitor for the 11th defendant. MAR's conflict of interest was further amplified by the dispute between the plaintiffs and the defendants as to how MAR's client, the sixth defendant, managed to become the shareholder of the first defendant without paying the redemption sum under the SSA and the fact that the firm's other client, the 11th defendant, a couple of months after entering the SPA with the first defendant, became the shareholder of the sixth defendant who, in turn, was the shareholder of the first defendant. (paras 28 & 32)
- (2) MAR would be embarrassed during the trial since the firm was likely to have been in possession of confidential information from having acted for the sixth defendant in the SSA and the 11th defendant in the SPA, both of which were the subject matters of this suit. MAR was also likely to possess confidential information as to how the sixth defendant replaced the plaintiffs as shareholders of the first defendant without the original signed share transfer forms. (para 34)

- A (3) There was reason to believe that the professional conduct of the solicitors in MAR was likely to be impugned in this case. How was it possible for the firm's client, the sixth defendant, to be registered as the shareholder of the first defendant without having paid the redemption sum under the SSA and without the original transfer documents and the original share certificates? How was it possible for the second and third defendants to replace the plaintiffs, as directors of the first defendant, without the resignation letters signed by the plaintiffs? These were questions likely to be asked of the solicitors in MAR during the trial of this suit. It would entail the solicitors in MAR that had negotiated, advised, acted for and represented the sixth defendant in the SSA to be called as witnesses during the trial. (para 36)
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- D (4) In view of MAR's role in the SSA and SPA, it would render it difficult for the lawyers in the firm who had advised and negotiated the SSA and SPA and who had acted for and represented the sixth and 11th defendants in both transactions to maintain their professional independence. It would be incompatible with the best interest of justice for MAR to continue representing the first, sixth, tenth and 11th defendants. Pursuant to rr. 3, 4, 5 and 28(a) of the Legal Profession (Practice and Etiquette) Rules 1978, MAR should no longer act for or represent the first, sixth, tenth and 11th defendants. (paras 45 & 46)
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Case(s) referred to:

Lee Kam Sun v. Ho Sau Lin & Anor [1999] 4 CLJ 507 HC (*refd*)

Quah Poh Keat & Ors v. Ranjit Singh Taram Singh [2009] 4 CLJ 316 CA (*refd*)

Legislation referred to:

- F Companies Act 2016, s. 105

Legal Profession (Practice and Etiquette) Rules 1978, rr. 3, 4, 5(a), 28(a)

For the plaintiffs - Zulqarnain Lukman; M/s Asri Musa & Co

For the 1st, 6th, 9th, 10th & 11th defendants - Swee Long & Yew Ka Hui; M/s Armiy Rais

- G *Reported by Najib Tamby*

JUDGMENT

(encl. 56)

- H **Faizah Jamaludin J:**

Introduction

- I [1] The first plaintiff ("P1") and the second plaintiff ("P2") (collectively referred to as the "plaintiffs") are seeking in their application in encl. 56 to disqualify the law firm, Messrs Armiy Rais, from acting for the first defendant ("D1"), sixth defendant ("D6"), ninth defendant ("D9"), tenth defendant ("D10") and 11th defendant ("D11") in this suit.

- [2] The plaintiffs were the shareholders and directors of D1. At all material times, D1 is the registered owner and beneficial owner of a vacant Malay reservation land held under HSM 18963, PT38859, Tempat Sungai Mangga, Mukim Rawang, Daerah Gombak, Negeri Selangor Darul Ehsan measuring approximately 1.215 hectare (the “land”). A
- [3] The plaintiffs plead in their statement of claim that in or around the end of 2017, a Dato Chen Kon Fook was interested to purchase the land. The land is a Malay reservation land. Accordingly, the plaintiffs entered with D6 into a share sales and purchase agreement dated 26 January 2018 (“SSA”) for the plaintiffs to sell to D6 the total issued shares of D1 comprising of 300,000 ordinary shares (the “shares”). B C
- [4] The plaintiffs had pledged the shares to the lenders (as defined in SSA) for personal loans. The terms and conditions of the SSA stipulate that the shares were to be transferred to D6 upon payment of (i) the purchase price of RM2 million to the plaintiffs and (ii) the redemption sum of RM6 million to the lenders for the redemption of the original share certificates for the shares. D
- [5] The security documents under the SSA were kept by the plaintiffs’ solicitors, Messrs Lee & Lim, as stakeholders (“stakeholder solicitors”) pending the completion of the SSA. The security documents included the original share transfer forms for the shares and the plaintiffs’ undated resignation letters as directors of D1. The stakeholder solicitors were to release the transfer documents and the resignation letters to D6 for registration of the transfer of shares and the plaintiffs’ resignation as directors of D1, after D6 had paid the redemption sum of RM6 million and had redeemed the original share certificates. E F
- [6] However, D6 only paid the purchase price for the shares. It never paid the redemption sum and it never redeemed the original share certificates for the shares. To date, the original signed share transfer forms and the plaintiffs’ resignation letter remains in the custody of the stakeholder solicitors. G
- [7] Although, D6 did not pay the redemption sum and was not given the original share transfer forms and the resignation letters, D6 managed to register on the company register at the Suruhanjaya Syarikat Malaysia (“SSM”) the transfer of the shares in D1 from the plaintiffs to D6 and replace the plaintiffs as directors of D1. H
- [8] The SSM search results on D1 showed that, based on documents filed by D1 with SSM on 14 November 2018, D6 was the sole shareholder of the D1, and that the third defendant (“D3”) was appointed as director of D1 on 3 August 2018 and the second defendant (“D2”) was appointed as director of D1 on 31 October 2018 in place of the plaintiffs. I

A [9] The plaintiffs' action against the defendants in this suit relates to alleged fraud, wrongdoing, *etc*, relating to the transfer of the shares from the plaintiffs to D6 and for the sale of the land by D1 to D11 through a sale and purchase agreement dated 9 November 2018 ("SPA").

B [10] The facts show that shortly after the change of D1's directors from the plaintiffs to D2 and D3, D1 sold the land to D11 without the plaintiffs or their solicitors' knowledge. D1 had entered into the SPA with D11 for the sale of the land by D1 to D11 for the sum of RM500,000 only. D11 admits in her affidavit in reply (encl. 67) that after entering into the SPA for the purchase of the land from D1, she became the sole shareholder of D6 on 29 January 2019. As D6 is the sole shareholder of D1, and D11 is the sole shareholder of D6, it follows that D11 is ultimate shareholder of D1.

C [11] The common denominator in all these transactions is the law firm, Messrs Army Rais. It had acted for D6 in its purchase of the shares in D1 under the SSA and it had also acted for D11 in her purchase of the land from D1 under the SPA. It is now acting for D1, D6, D10 and D11 in the instant suit by the plaintiffs against the defendants.

The Facts

E [12] The SPA between D1 and D11 was dated 9 November 2018. On 12 November 2018, Messrs Army Rais wrote a letter to the stakeholder solicitors stating that they represent D6 and requested for the original issue document of title for the land for their client's "exercise of conversion" of the land.

F [13] In their reply dated 14 November 2018 to Messrs Army Rais, the stakeholder solicitors refused to release the land title to Messrs Army Rais because the full consideration for the shares has not yet been settled and their fees have not yet been settled.

G [14] Messrs Army Rais then replied to the stakeholder solicitors in a letter dated 19 November 2018 asking them for the full details of the amount of consideration not yet settled and the stakeholder solicitors' outstanding fees.

[15] The stakeholder solicitors replied to Messrs Army Rais on the same day *ie*, on 19 November 2018, asking Messrs Army Rais or their client (D6) to provide a written explanation of the following:

H An SSM search has been conducted on the Company and surprisingly, there are new and additional directors. In addition thereto, the shareholder of the company has been changed to the Purchaser notwithstanding that we are still holding the original transfer form under Section 105 of the Companies Act, original stamped certificate for the transfer of share and original share certificate pending full considerations to be settled between the related parties and our invoice.

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[16] Messrs Armiy Rais did not reply to the stakeholders solicitors request for a written explanation. Instead on 15 January 2019, D11 lodged a private caveat on the land. Ong Kang Yong, an advocate and solicitor practising in Messrs Armiy Rais executed the surat akuan on the Form 19B for the lodgement of private caveat by D11 on the land. A

[17] On 1 November 2019, Messrs Armiy Rais filed an originating summons at the Shah Alam High Court (OS No. BA-24NCVC-1553-11-2019) on behalf of D1 against P1 seeking the removal of the private caveat that P1 had lodged on the land on 1 July 2019. B

[18] Hasniza binti Jaini, an advocate and solicitor practising in the stakeholder solicitors, filed a police report on 21 February 2020 (Report No. Petaling Jaya/002169/20) stating that on 25 February 2019, she discovered that there has been a change of directors and shareholders of D1. She stated in the police report that she had acted in the SSA and believed that there had been fraud, wrong doing, criminal breach of trust, *etc*, in the change of the shareholders and directors of D1 and the subsequent sale by D1 of the land to D11 because, among others, (i) the original issue document of title for the land, (ii) the original share certificates no. 003, 004, 005 and 006 for the shares; and (iii) the original transfer forms for the shares under s. 105 of the Companies Act 2016 dated 31 May 2018 that was executed by the plaintiffs and D6 together with original stamp duty certificate dated 2 June 2018, were still in her custody and control as at the date of the police report. C
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[19] On 12 March 2020, the plaintiffs issued a letter of termination to D6 giving it a 30-day notice of its termination of the SSA because the plaintiffs discovered that D6 by itself and/or through its agent without complying with the terms of the SSA had: F

- (i) refused, failed and/or defaulted in complying the SSA by not redeeming the original share certificates and paying the redemption sum of RM6 million; G
- (ii) removing the plaintiffs as directors of D1;
- (iii) replacing others as directors of D1 in place of the plaintiffs without complying with the SSA; and
- (iv) transferring the shares in D1 from the plaintiffs to itself. H

[20] Neither D6 nor their solicitors Messrs Armiy Rais responded to the plaintiffs' notice of termination of the SSA.

Analysis And Findings Of Court

[21] The facts show that Messrs Armiy Rais had acted for D6 for the purchase for the shares in D1 under the SSA and it had acted for D11 for the purchase of the land from D1 pursuant to the SPA. I

- A [22] D1, D6, D10 and D11 in their affidavits in reply to this application averred that they are advised by Messrs Armiy Rais, that there are no material and disputed questions of fact in the letters written in November 2018 between Messrs Armiy Rais and the stakeholders solicitors. They also state that they are advised by Messrs Armiy Rais that any communication between Messrs Armiy Rais and D6 in respect of Messrs Armiy Rais' letter dated 12 November 2018 to the stakeholder solicitors' requesting for the original issue document of title of the land is subject to legal professional privilege.

- C [23] The Legal Profession (Practice and Etiquette) Rules 1978 ("LP(PE)R 1978"), rr. 3, 4, 5(a), and 28(a) provides as follows:

3. Advocate and solicitor not to accept brief if embarrassed

- (a) An advocate and solicitor shall not accept a brief if he is or would be embarrassed.
- D (b) An embarrassment arises:
- (i) where the advocate and solicitor finds he is in possession of confidential information as a result of having previously advised another person in regard to the same matter;
- (ii) where there is some personal relationship between him and a party or a witness in the proceedings.
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4. No advocate and solicitor to accept brief if professional conduct likely to be impugned

- No advocate and solicitor shall accept a brief in a case where he knows or has reason to believe that his own professional conduct is likely to be impugned.
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5. No advocate and solicitor to accept brief if difficult to maintain professional independence

- (a) No advocate and solicitor shall accept a brief if such acceptance renders or would render it difficult for him to maintain his professional independence or is incompatible with the best interest of the administration of justice.
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28. Advocate and solicitor not to appear in a case where he is a witness

- H (a) An advocate and solicitor shall not appear in court or in chambers in any case in which he has reason to believe that he will be a witness in respect of a material and disputed question of fact, and if while appearing in a case it becomes apparent that he will be such a witness, he shall not continue to appear if he can retire without jeopardising his client's interests.
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[24] Mr Ong Swee Long of Messrs Army Rais, in objecting to this application, submits that this court should dismiss the plaintiffs' application to disqualify the firm because Messrs Army Rais is not a party to this suit and the plaintiffs as former shareholders of D1 do not have legal or equitable rights to the land. Also, because the plaintiffs have not pleaded any fraud and/or conspiracy against Messrs Army Rais.

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[25] To support his argument, Mr Ong cited cases on the trite principle of law that a company and its shareholders are separate legal entities and cases relating to a solicitor's obligation of confidentiality to its clients. He also argues that since Messrs Army Rais never acted for the plaintiffs, the principle of confidentiality between the firm and the plaintiffs does not apply.

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[26] The factors that this court must consider in deciding whether or not to disqualify Messrs Army Rais from acting for D1, D6, D10 and D11 in this suit are those detailed in the individual rules in the LP(RE)R 1978 which prohibit advocates and solicitors from accepting a brief from a client or from appearing in court on behalf of the said client.

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[27] Messrs Army Rais had acted for D6 in its purchase of the shares in D1 under the SSA. It had also acted for D11 in her purchase of the land from D1 under the SPA. It is now acting for D1, D6, D10 and D11 in this suit.

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[28] Having acted for D6 in the SSA and D11 in the SPA and the fact that D6 was the sole shareholder of D1 at the time D1 entered into the SPA with D11, I find that Messrs Army Rais would be in a position of conflict of interest in acting for D1, D6, D10 and D11 in this suit. This can be seen from Messrs Army Rais writing to the stakeholder solicitors under the SSA as solicitor for D6 asking for the land title which is not the subject matter of the SSA but is instead the subject matter of the SPA, where Messrs Army Rais had acted as solicitor for D11.

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[29] The date of the SPA between D1 and D11 for the sale and purchase of the land was 9 November 2018, which was a Friday. The facts show on the next working day after the date of the SPA *ie*, Monday 12 November 2018, Messrs Army Rais wrote to the stakeholder solicitors stating that it was acting for D6 and that it wants the stakeholder solicitors to release the original issue document of title of the land for "our client's exercise of conversion of land soonest possible".

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[30] It is puzzling why Messrs Army Rais wrote to the stakeholder solicitors for the original title of the land since D6 did not purchase the land from the plaintiffs – D6 had purchased the shares from the plaintiff under the SSA. It was D11 who had purchased the land from D1 pursuant to the SPA.

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[31] Could it be that Messrs Army Rais had forgotten – one working day after the date of the SPA – who it had acted for in respect of the purchase of the shares in D1 under the SSA and who it had acted for in the purchase

- A of the land under the SPA? Or was there another motive for Messrs Army Raisen to ask the stakeholder solicitors on 12 November 2018 for the issue document of title for the land even though D6 did not purchase the land – taking into account the plaintiffs’ pleading that they had entered into the SSA with D6 to sell all the shares in D1 to D6, after Dato Chen Kon Fook expressed his interest to purchase the land, which is a Malay reservation land, belonging to D1.

- [32] To my mind, Messrs Army Raisen’s conflict of interest is further amplified by the dispute between the plaintiffs and the defendants as to how Messrs Army Raisen’s client, D6, managed to become shareholder of D1 without paying the redemption sum under the SSA and the fact that the firm’s other client, D11, a couple of months after the entering the SPA with D1, became the shareholder of D6 who is in turn the shareholder of D1. The SSM search results show that based on documents filed with the SSM on 14 November 2018, D6 had been registered as the sole shareholder of D1.
- D Why did Messrs Army Raisen not tell the stakeholder solicitors, in their reply dated 19 November 2018 that the transfer of shares in D1 had been affected from the plaintiffs to D6, and that D1 pursuant to the SPA had sold the land to D11?

- [33] Additionally, as it was representing D6 in the SSA, why Messrs Army Raisen did not reply to the stakeholder solicitors’ request for explanation as to how D1’s shareholder had changed from the plaintiffs to D6 when the stakeholder solicitors was still in possession of the original signed transfer forms and the original share certificates.

- [34] Messrs Army Raisen would also be embarrassed during the trial since the firm is likely to have been in possession of confidential information from having acted for D6 in the SSA and D11 in the SPA, both of which are the subject matters of this suit. The firm is also likely to possess confidential information as to how its client, D6, replaced the plaintiffs as shareholders of the D1 without the original signed share transfer forms.

- G [35] Under r. 4 of the LPE(PE) 1978, contrary to Mr Ong’s submissions, it is not necessary for the solicitor whose conduct is likely to be impugned to be made party in a suit in order for that solicitor to be prohibited from acting in a case. Under r. 4 of the LP(PE)R 1978, it is sufficient that if there is reason to believe that the solicitor’s conduct will be impugned for him to be prohibited from acting in the said case.

- [36] I find that based on the pleadings and the evidence in the affidavits, there is reason to believe that the professional conduct of the solicitors in Messrs Army Raisen is likely to be impugned in this case. How was it possible for the firm’s client, D6, to be registered as shareholder of D1 without having paid the redemption sum under the SSA and without the original transfer documents and the original share certificates? And how was it possible for

D2 and D3 to replace the plaintiffs as directors of D1 without the resignation letters signed by the plaintiffs? These are questions likely to be asked of the plaintiffs' counsel of the solicitors in Messrs Armiy Rais during the trial of this suit. It would entail the solicitors in Messrs Armiy Rais that had negotiated, advised, acted for and represented D6 in the SSA to be called as witnesses during the trial.

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[37] Furthermore, Messrs Armiy Rais had written the letter dated 12 November 2018 to the stakeholder solicitors requesting for the original issue document of title for the land stating that it was acting for D6 and that it requires the title for "our client's exercise of conversion of the land". D6 did not purchase the land under the SSA. Hence, it is very likely that the plaintiffs' counsel will subpoena as a witness for the trial of this suit, the solicitor in Messrs Armiy Rais who had written the letters in respect of the original issue document of title to the land to the stakeholder solicitors in November 2018. The solicitor is likely to be asked to explain why Messrs Armiy Rais who was acting for D6 in the SSA, had written the letter to the stakeholder solicitors asking for the issue document of title for the land.

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[38] It is also likely that the plaintiffs' counsel will also call as a witness, Ong Kang Yong, the solicitor practicing at Messrs Armiy Rais, who had witnessed D11's signature on the SPA and who had executed the surat akuan on the Form 19B on 15 November 2019 for the lodgement of private caveat by D11 on the land.

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[39] Rule 28(a) of the LP(PE)R 1978 states that an advocate and solicitor should not appear in court in any case where there is reason to believe that he will be a witness in respect of a material or disputed facts in the case.

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[40] In *Lee Kam Sun v. Ho Sau Lin & Anor* [1999] 4 CLJ 507; [1999] 4 MLJ 509; [1999] AMEJ 0046, James Foong J (as he then was) held:

It is a well-established principle that lawyers should not act as counsel and witnesses in the same proceedings. The reason, as expounded by Beaumont CJ in *Emperor v. Dadu Ramu* [1939] AIR Bom 150, is: "**An advocate cannot cross-examine himself, nor can he usefully address the court as to the credibility of his own testimony, and a court may feel that justice will not be done if the advocate continues to appear**". This rule is expressly accepted by the Federal Court in *Wong Sin Chong & Anor v. Bhagwan Singh & Anor* [1993] 4 CLJ 345; [1993] 2 AMR 3351; [1993] 3 MLJ 679 at 678.

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(emphasis added)

[41] In *Quah Poh Keat & Ors v. Ranjit Singh Taram Singh* [2009] 4 CLJ 316; [2009] 4 MLJ 293; [2009] 6 AMR 330, the Court of Appeal agreed with the High Court to invoke to r. 28(a) of the LPR(PE) 1978 to disqualify the legal firm Messrs Lee Hishamuddin to avoid the embarrassment during trial and

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A to “eliminate any possible conflict of interest surfacing on the solicitors’ part and simultaneously ensured that the interests of the contesting parties were not compromised.” Suriyadi Halim Omar JCA (as he then was) said:

B [18] At the end of the appeal, we held the view that it would be unlikely that Datuk Naban would suggest to the respondent to pack his bags and go, if the conclusion of the meeting had not been in consonant with his or firm’s legal views. If he had held a differing view, it was more than likely that the unpleasant duty of transmitting the bad news would have fallen on a KPMG official or some other unfortunate soul. By all account this finding of guilt of the respondent of gross misconduct, and followed by the instruction to pack his bags and go, are material issues, let alone C hotly disputed as there was total denial by the respondent of the charges. *With the demands of r. 28(a) [of the Legal Profession Rules (Practice and Etiquette) 1978] having been completely complied with, in particular the existence of the statutory requirements of material or disputed facts, we held the view that any reasonable man armed with those facts would anticipate the calling of these two lawyers as witnesses.*

D (emphasis added)

[42] Mr Ong argues that in respect of r. 28(a) of the LP(PE)R 1978, there are no disputed or material question of facts that would require the presence of solicitors from Messrs Armiy Rais as witnesses in this suit. With respect E to Mr Ong, the disputed facts in this case relate to the alleged fraud and/or wrongful acts perpetrated on the plaintiffs through or in relation to the SSA and the SPA – Messrs Armiy Rais had been involved in both agreements. Hence, contrary to Mr Ong’s argument, there is every reason to believe that the solicitors in Messrs Armiy Rais who had been involved in the F negotiations, drafting, acting and/or representing the parties in the SSA and SPA will be called as a witness in the trial of this suit. Thus, for this reason alone, under r. 28(a) of the LP(PE)R 1978, Messrs Armiy Rais must be disqualified from acting for any of the defendants in this suit.

G [43] Mr Ong further submits that even if solicitors from Messrs Armiy Rais are called to testify as witnesses, their testimony will only relate to matters which are formal or non-contentious: therefore, the firm is not prohibited from acting for D1, D6, D9, D10 and D11.

H [44] I must confess that I am perplexed by Mr Ong’s argument that if called as a witness, the solicitors from Messrs Armiy Rais will only be asked questions relating to “formal or non-contentious” matters, so the firm is not prohibited from acting for the defendants in this case. With respect to Mr Ong, neither he nor this court are in a position to second guess the type of questions that learned counsel for the plaintiffs will be asking the lawyers from Messrs Armiy Rais who are called to testify as witnesses during the trial I in this suit. Moreover, r. 28(a) of the LP(PE)R 1978 states that if there is reason to believe that an advocate or solicitor will be called as a witness in

any case, he should not appear in court in that case. Rule 28(a) does not state that an advocate and solicitor can act for a client in any case in court even if it is likely that he will be called as a witness in that case because he will only be asked “formal or non-contentious questions”.

[45] In view of Messrs Armiy Rais’ role in the SSA and SPA, I find that it would render it difficult for the lawyers in the firm who had advised and negotiated the SSA and SPA and who had acted for and represented D6 and D11 in both transactions to maintain their professional independence. This is especially in view of the conflict of interests and the likelihood that their conduct and that of the firm’s may be impugned in this suit.

[46] For all these reasons, it would be incompatible with the best interest of justice for Messrs Armiy Rais to continue representing D1, D6, D10 and D11 in this suit. Therefore, I find that pursuant to rr. 3, 4, 5(a) and 28(a) of the LP(PE)R 1978, Messrs Armiy Rais should no longer act for or represent D1, D6, D10 and D11 in this suit.

Decision

[47] Accordingly, the plaintiffs’ application in encl. 56 to disqualify Messrs Armiy Rais from acting for D1, D6, D10 and D11 in this suit is allowed.

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